

State of Utah  
Administrative Rule Analysis

## NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-1-109	Time filed:	
Changed to Admin. Code Ref. (R no.):			

1.	Agency:	Commerce/Division of Occupational and Professional Licensing		
	Room no.:			
	Building:	Heber M. Wells Building		
	Street address 1:	160 East 300 South		
	Street address 2:			
	City, state, zip:	Salt Lake City UT 84111-2316		
	Mailing address 1:	PO Box 146741		
	Mailing address 2:			
	City, state, zip:	Salt Lake City UT 84114-6741		
	<b>Contact person(s):</b>			
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>	<b>E-mail:</b>
	Dan S. Jones	801-530-6720	801-530-6511	dansjones @utah.gov

(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

2.	<b>Title of rule or section (catchline):</b>
	Presiding Officers

3.	<b>Type of notice:</b>
	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___

4.	<b>Purpose of the rule or reason for the change:</b>
	<p>The Division and the Construction Services Commission are proposing amendments to change certain limited formal adjudicative proceedings to informal adjudicative proceedings with respect to licensed contractors who fail to replace a qualifier within the 60 days required by statute or who fail to maintain liability insurance as required by statute in R156-46b. Many formal adjudicative proceedings with the potential result of revocation of license may involve substantial evidence presentation and weighing of evidence to determine if the case warrants the sanction of revocation of license. However, these two types of cases are all very simple fact patterns. That being the licensed contractor either has liability insurance or not or the contractor either has a qualifier on staff or not. The governing statute, Title 58, Chapter 55, provides contractors are obligated to maintain liability insurance and a qualifier. Division Bureau Managers are now successfully handling much more complicated factual reviews in informal adjudicative proceedings of new applications which result in denial of licensure for unqualified applicants than these cases present. Therefore, these proposed changes will not result in any detrimental effect on licensed contractors who are able to demonstrate that they are qualified and will not necessarily waste Division resources for a formal adjudicative proceeding when the case does not need that level of review and expense. As a result of the proposed amendments to R156-46b, a related addition needs to be made in this rule to Paragraph (4)(d)(ii).</p>

5.	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>
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	Yes ____; No XX
6.	<b>Summary of the rule change:</b> In paragraph (4)(d)(ii) of this section, a reference to R156-46b-202(2)(e) and (f) is added.
7.	<b>Aggregate anticipated cost or savings to:</b> <b>A) State budget:</b> The Division anticipates no costs to the state budget as a result of these proposed amendments. The proposed amendments will allow the Division to more efficiently handle these two types of cases with respect to contractors in an informal setting without unnecessarily devoting resources to formal proceedings. Any savings realized will be absorbed in the Division's existing budget and will allow these resources to be directed to other functions needing attention. <b>B) Local government:</b> Proposed amendments do not apply to local governments. The proposed amendments only apply to licensed contractors who fail to replace a qualifier within the 60 days required by statute or who fail to maintain liability insurance as required by statute. <b>C) Small businesses (fewer than 50 employees) AND persons other than businesses:</b> The proposed amendments only apply to licensed contractors who fail to replace a qualifier within the 60 days required by statute or who fail to maintain liability insurance as required by statute. Some of the licensed contractors who fail to comply with either of these two requirements may qualify as a "small business". No costs will be incurred by licensed contractors if they comply with all statutory requirements affecting their profession. The Division anticipates licensed contractors who fail to comply with either of these two requirements may realize in a savings in time as a result of changing these two proceedings from formal to informal.
8.	<b>Compliance costs for affected persons</b> ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency): The proposed amendments only apply to licensed contractors who fail to replace a qualifier within the 60 days required by statute or who fail to maintain liability insurance as required by statute. No costs will be incurred by licensed contractors if they comply with all statutory requirements affecting their profession. The Division anticipates licensed contractors who fail to comply with either of these two requirements may realize in a savings in time as a result of changing these two proceedings from formal to informal.
9.	<b>Comments by the department head on the fiscal impact the rule may have on businesses:</b> This rule filing changes the designation of license revocation proceedings for failure to maintain a qualifier and failure to maintain liability insurance from formal adjudicative proceedings to informal adjudicative proceedings. It is expected that this change would result in a cost savings to the industry as well as to the Division. No fiscal impact to other businesses is anticipated by this change in administrative procedures. Francine A. Giani, Executive Director
10.	<b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b> <b>State code or constitution citations (required):</b> Subsections 58-1-106(1)(a) and 58-1-501(4) and Section 58-1-308
11.	<b>This rule adds, updates, or otherwise changes the following titles of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):  
12.	<b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i> . See Section 63-46a-5 and Rule R15-1 for more information.) <b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b> 10/01/2008 <b>B) A public hearing (optional) will be held:</b>

	<b>on (mm/dd/yyyy):</b>	<b>at (time):</b>	<b>At (place):</b>		
	09/24/2008	9:00 am	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah		
<b>13.</b>	<b>This rule change may become effective on (mm/dd/yyyy):</b>		10/08/2008		
	NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.				
<b>14.</b>	<b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):				
	diversion programs	licensing			
	occupational licensing	supervision			
<b>15.</b>	<b>Attach an RTF document containing the text of this rule change (filename):</b>		R156-1.pro		
<b>To the agency:</b> Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.					
<b>AGENCY AUTHORIZATION</b>					
<b>Agency head or designee, and title:</b>		F. David Stanley, Director	<b>Date (mm/dd/yyyy):</b> 07/28/2008		

**R156. Commerce, Occupational and Professional Licensing.**

**R156-1. General Rules of the Division of Occupational and Professional Licensing.**

**R156-1-109. Presiding Officers.**

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h), (j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to

the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any

evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o) and R156-46b-202(2)(e) and (f).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

**KEY: diversion programs, licensing, occupational licensing, supervision**

**Date of Enactment or Last Substantive Amendment: ~~[June 23,~~  
]2008**

**Notice of Continuation: March 1, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)**